

MANDATE

EDNY/CINY
98-cv-4839
Platt, J.

07-3673-cv (L); 07-3675-cv (L); 07-3674-cv (L)
Federman v. Artzt; Barroway v. Computer Assocs.; In re Computer Assoc. 2002

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

NOV 02 2009

SUMMARY ORDER

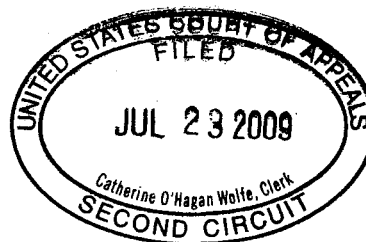
LONG ISLAND OFFICE

4 RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED
5 AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND
6 FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT
7 CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION
8 MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)."
9 UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE
10 WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE
11 PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER
12 WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE
13 AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT
14 DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

15 At a stated term of the United States Court of Appeals for the
16 Second Circuit, held at the Daniel Patrick Moynihan United States
17 Courthouse, 500 Pearl Street, in the City of New York, on the
18 23rd day of July, two thousand nine.

19 PRESENT:

20 JOHN M. WALKER, JR.,
21 ROBERT D. SACK,
22 Circuit Judges,
23 JOHN G. KOELTL,*
24 District Judge.



25 -----
26 CHARLES FEDERMAN, Derivatively on
27 Behalf of Nominal Defendant,
28 Plaintiff,

29 BERT VLADIMIR and IRVING ROSENZWEIG,
30 Movants,

No. 07-3673-cv (L),
07-4022-cv (CON),
07-4904-cv (XAP);
07-3675-cv (L),
07-4020-cv (CON);
07-3674-cv (L),
07-4024-cv (CON)

31 RANGER GOVERNANCE, LTD.,
32 derivatively on behalf of Computer
33 Associates International, Inc.,
34 Movant-Appellant-Cross-Appellee

* The Honorable John G. Koeltl, District Judge of the
United States District Court for the Southern District of New
York, sitting by designation.

1 - v -

2 RUSSELL M. ARTZT, WILLIAM F.P. DE
3 VOGEL, RICHARD GRASSO, LEWIS S.
4 RANIERI, ALFONSE M. D'AMATO, SHIRLEY
5 STRUM KENNY, SANJAY KUMAR, ROEL
6 PIEPER, and CHARLES B. WANG,
7 Defendants-Appellees-Cross
8 Appellees,

9 COMPUTER ASSOCIATES INTERNATIONAL,
10 INC.,
11 Defendant-Appellee-Cross Appellant,

12 SPECIAL LITIGATION COMMITTEE OF THE
13 BOARD OF DIRECTORS OF COMPUTER
14 ASSOCIATES INTERNATIONAL, INC.,
15 Respondent.

16 IN TANDEM WITH

17 SAM WYLY, and OTHER WYLY MOVANTS,
18 Movants-Appellants,

19 - v -

20 COMPUTER ASSOCIATES INTERNATIONAL,
21 INC., CHARLES B. WANG, SANJAY KUMAR,
22 and RUSSELL M. ARTZT,
23 Defendants-Appellees,

24 ANDREW L. BARROWAY, on behalf of
25 himself and others similarly
26 situated, Plaintiffs' Co-Lead
27 Counsel,
28 Plaintiffs,

29 STEVEN SINSHEIMER, on behalf of
30 himself and all others similarly
31 situated, FELIX GLAUBACH, on behalf
32 of himself and all others similarly
33 situated, JERRY WEHMHOFER, on
34 behalf of himself and all others
35 similarly situated, JOHN J. GRECO,
36 on behalf of himself and all others
37 similarly situated, LILLIAN

1 HERSCHKOWITZ, and BRUCE MONTAGUE,
2 Consolidated-Plaintiffs,

3 IRA H. ZAR, ALFONSE M. D'AMATO, JAY
4 W. LORSCH, LEWIS S. RANIERI, and
5 WALTER P. SCHUETZE,
6 Defendants,

7 SEYMORE PIENKNY, SPECIAL LITIGATION
8 COMMITTEE OF THE BOARD OF DIRECTORS,
9 Respondents.

10 IN TANDEM WITH

11 WYLY MOVANTS,
12 Movants-Appellants,

13 - v -

14 CHARLES FEDERMAN, Derivatively on
15 Behalf of Nominal Defendant,
16 COMPUTER ASSOCIATES INTERNATIONAL,
17 INC.,
18 Plaintiff-Appellee,

19 SANJAY KUMAR and CHARLES B. WANG
20 Defendants-Appellees,

21 RUSSELL M. ARTZT, WILLIAM F.P. DE
22 VOGEL, RICHARD GRASSO, LEWIS S.
23 RANIERI, ALFONSE M. D'AMATO, SHIRLEY
24 STRUM KENNY, and ROEL PIEPER,
25 Defendants,

26 SPECIAL LITIGATION COMMITTEE OF THE
27 BOARD OF DIRECTORS OF COMPUTER
28 ASSOCIATES INTERNATIONAL INC.,
29 Respondent.

30 -----
31 Appearing for Appellant: James S. Renard, Bickel & Brewer
32 (William A. Brewer III, Luke A.
33 McGrath, of counsel), New York, NY.

34 Appearing for Appellee
35 Computer Associates

1 International, Inc.:

David B. Tulchin, Sullivan &
Cromwell LLP (Tracy Richelle High,
William B. Monahan, of counsel),
New York, NY.

5 Appearing for Appellee
6 Charles B. Wang:

Linda T. Coberly, Winston & Strawn
LLP (Vincent A. Sama, Adam J.
Schlatner, Kara L. Gorycki, Ari E.
Waldman, of counsel), Chicago IL
and New York, NY.

11 Appearing for Appellees
12 Willem F.P. de Vogel,
13 Shirley Strum Kenny, and
14 Roel Pieper:

Lawrence O. Kamin, Willkie Farr &
Gallagher LLP (Deirdre N. Hykal,
David A. Benner, of counsel), New
York, NY.

18 Appearing for Appellee
19 Richard Grasso:

William P. Ashworth, Williams &
Connolly LLP (Steven M. Farina, of
counsel), Washington, DC.

22 For Appellees Alfonse M.
23 D'Amato, Lewis S. Ranieri,
24 and Walter P. Schuetze:

Lewis J. Liman, Cleary Gottlieb
Steen & Hamilton LLP, New York, NY.

26 Appeal from orders of the United States District Court for
27 the Eastern District of New York (Thomas C. Platt, Judge).

28 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
29 DECREED that the judgment of the district court be, and it hereby
30 is, AFFIRMED.

31 The appellants appeal from the district court's denial of
32 their motions for relief pursuant to Federal Rule of Civil
33 Procedure 60(b). Computer Associates International, Inc.
34 ("Computer Associates") cross-appeals from the district court's
35 denial of its motion to clarify or amend its August 2, 2007
36 order. We assume the parties' familiarity with the underlying
37 facts and procedural history of the cases, and the issues on
38 appeal.

39 All three of the appeals before us involve Rule 60(b)
40 motions for relief from a 2003 global settlement of the present

litigation that, inter alia, barred Computer Associates and its shareholders from thereafter bringing lawsuits against the company and specified executives it employs or employed. This global settlement also resulted in the dismissal of two sets of class actions, captioned here as Barroway v. Computer Associates and In re: Computer Associates 2002, and one derivative suit, Federman v. Artzt. The district court correctly denied the Rule 60(b) motions in all of the cases.

The parties that moved for Rule 60(b) relief and who appeal the denial of that relief are: Ranger Governance, Ltd. ("Ranger"), which filed a motion for Rule 60(b) relief in Federman; Sam Wyly, who filed a motion for Rule 60(b) relief in Barroway; and a group of Computer Associates shareholders known as the "Wyly Movants," who filed a motion for Rule 60(b) relief in In re: Computer Associates. All of these movants were Computer Associates shareholders at the time of the global settlement, and each has brought suit to seek damages against Computer Associates and several of its officers: Ranger in the derivative action Ranger Governance v. Vogel, et al., Wyly in the individual action Wyly v. Wang, et al., and the Wyly Movants in the individual action Wyly Movants v. Wang, et al. The ability of the plaintiffs to maintain these suits is arguably barred by the global settlement.

The parties therefore moved for relief under Federal Rule of Civil Procedure 60(b), which provides: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" for certain enumerated reasons. (Emphasis added.) None of the movants was a party to an underlying lawsuit in which he or it filed such a motion. Although Ranger had brought its own derivative lawsuit, it was not a party to the Federman suit in which it filed its Rule 60(b) motion. And while Wyly and the Wyly Movants were Computer Associates shareholders at the time of the global settlement and were therefore absent class members in the class actions in which they filed their Rule 60(b) motions, neither Wyly nor the Wyly Movants was a party to those underlying class actions for the purposes of Rule 60(b). See In re Four Seasons Secs. Laws Litig., 525 F.2d 500, 504 (10th Cir. 1975) (concluding that class member who was absent during the settlement proceedings is not a "party" to "object to the nature or adequacy of the settlement . . . under Rule 60(b)" (internal quotation marks omitted)).

Although Rule 60(b) relief is "not ordinarily . . . available to non-parties," we have allowed non-parties to bring Rule 60(b) motions when "on the facts of th[e] case appellants

1 were sufficiently connected and identified with the . . . suit to
2 entitle them to standing to invoke [the Rule]." Dunlop v. Pan
3 Am. World Airways, Inc., 672 F.2d 1044, 1052 (2d Cir. 1982); see
4 Grace v. Bank Leumi Trust Co. of N.Y., 443 F.3d 180, 188 (2d Cir.
5 2006) ("Today, as in Dunlop, we limit our decision to the facts of
6 this case."). Both Dunlop and Grace involved extraordinary
7 circumstances in which a non-party had interests on which the
8 outcome of the proceedings had significant consequences for the
9 movants, yet those interests had not been adequately represented
10 during litigation, because of the peculiar structure of each
11 case.

12 There is nothing similarly extraordinary about the situation
13 before us. Ranger, though a shareholder, was not individually
14 involved in the Federman derivative lawsuit. Nor did its
15 interests differ from other shareholders such that they were not
16 adequately represented. Wyly and the Wyly Movants were involved
17 in the class actions only as shareholders who had not filed a
18 timely objection to the settlement of those actions -- they were
19 not lead plaintiffs in those class actions, and the lead
20 plaintiffs have declined to seek Rule 60(b) relief. "[T]he main
21 purpose of having a lead plaintiff [is] to empower one or several
22 investors with a major stake in the litigation to exercise
23 control over the litigation as a whole. The only other
24 possibility - that the court should cobble together a lead
25 plaintiff group that has standing to sue on all possible causes
26 of action - has been rejected repeatedly by courts in this
27 Circuit." Hevesi v. Citigroup Inc., 366 F.3d 70, 83 n.13 (2d
28 Cir. 2004) (citation and internal quotation marks omitted). We
29 therefore decline to expand the narrow exception to the general
30 rule that non-parties cannot bring Rule 60(b) motions to cover
31 the case before us.

32 We do not reach the grounds upon which the district court
33 dismissed the Rule 60(b) motions in these cases, because we thus
34 conclude that the moving parties lacked standing to bring those
35 motions. Cf. ACEquip Ltd. v. Am. Eng'g Corp., 315 F.3d 151, 155
36 (2d Cir. 2003) ("Our court may, of course, affirm the district
37 court's judgment on any ground appearing in the record, even if
38 the ground is different from the one relied on by the district
39 court.").

40 Ranger appears to assert that as a plaintiff in the
41 derivative suit, Ranger Governance v. Vogel, et al., it has an
42 independent source of standing in Federal Rule of Civil Procedure
43 23.1, which governs the conditions under which a "shareholder[] .
44 . . [may] bring a derivative action to enforce a right that the
45 corporation or association may properly assert but has failed to

1 enforce." But while Ranger might have had standing under Rule
2 23.1 to bring its own derivative action seeking damages against
3 Computer Associates, the question before us is whether Ranger has
4 standing to bring a Rule 60(b) motion in Federman, a suit to
5 which Ranger was not a party. For the above-stated reasons, we
6 conclude that it does not.

7 The district court denied the Special Litigation Committee's
8 ("SLC") motion under Federal Rule of Civil Procedure 59(e) asking
9 the court to make clear that its August 2 order "did not
10 adversely affect [Computer Associates's] ability to overturn the
11 release," or, "[i]n the alternative . . . to amend the Order to
12 make clear that a motion served by the company seeking to
13 overturn the release would 'relate back' to the shareholders'
14 motions to that effect." Br. of Appellee and Cross-Appellant
15 Computer Associates, Inc., No. 07-3673-cv, at 24-25. Computer
16 Associates's motion, which was made in support of the SLC's
17 motion, was also denied. "[D]istrict courts may alter or amend
18 judgment to correct a clear error of law or prevent manifest
19 injustice." Munafo v. Metro. Transp. Auth., 381 F.3d 99, 105 (2d
20 Cir. 2004) (internal quotation marks omitted). "A district
21 court's denial of a party's motion to alter or amend judgment
22 under Rule 59(e) is . . . reviewed for an abuse of discretion."
23 Id.

24 Computer Associates's theory of "relating back" is, to the
25 best our knowledge, a novel one. No clear principle of law was
26 violated by the district court's refusal to grant it, nor does it
27 result in manifest injustice. We therefore decline to overrule
28 it as an abuse of the court's discretion.

29 We note, however, that the Ranger action remains pending.
30 The district court has denied without prejudice, pending these
31 appeals, Computer Associates's motion to realign itself as the
32 plaintiff and dismiss various claims in that action. Nothing
33 occurring in the Ranger action is currently before us -- both
34 Ranger's Rule 60(b) motion and Computer Associates' Rule 59(e)
35 motion were made in the Federman action -- and no action taken by
36 the district court or by us, so far as we are aware, prevents
37 Computer Associates from renewing its motion to realign or
38 seeking to pursue a claim in that proceeding. If Computer
39 Associates renews its motion to realign, the court should then
40 consider the merits of permitting realignment and permitting the
41 corporation to pursue or dismiss various claims, consistent with
42 the best interests of the shareholders. See Bluth v. Bellow,

1 1987 WL 9369, 1987 Del. Ch. LEXIS 414 (Del. Ch. 1987); Zapata
2 Corp. v. Maldonado, 430 A.2d 779 (Del. 1981).

3 For the foregoing reasons, the judgment of the district
4 court is hereby AFFIRMED.

5 FOR THE COURT:

6 Catherine O'Hagan Wolfe, Clerk of the Court

7 By: 
8

A TRUE COPY

Catherine O'Hagan Wolfe, Clerk

by 

DEPUTY CLERK